

### **REMARKS**

This Amendment is responsive to the Office Action dated July 25, 2008. Applicant has amended claims 1, 8, 17, 29, 33 and 39-44. Claims 1-44 remain pending.

#### **Claim Rejection Under 35 U.S.C. § 101**

In the Office Action, the Examiner rejected claims 1-16 under 35 U.S.C. 101 because the claimed invention is allegedly directed to non-statutory subject matter. In support of the rejection, the Examiner stated that claims 1 and 8 “do not expressly or impliedly recite any physical transformation of physical subject matter” and that they “could be performed entirely by human beings.”<sup>1</sup> In response to this rejection, Applicant has amended independent claims 1 and 8 to specifically recite physical subject matter. In particular, Applicant has amended claim 1 to recite “prioritizing, with a prioritization engine . . . and presenting, with a user interface device.” Applicant has also amended claim 8 to recite “interrogating, with a remote monitor . . . receiving, with a prioritization engine . . . and assigning, with the prioritization engine.” Applicant submits that independent claims 1-16, as amended, recite statutory subject matter. Accordingly, withdrawal of the rejection is respectfully requested.

#### **Claim Rejection Under 35 U.S.C. § 112**

In the Office Action, the Examiner rejected claims 1-44 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More specifically, the Examiner stated that the term “interrogation” in claims 1, 8, 17, 29, 33 and 39 is a “relative term” and that the term “is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.” Applicant respectfully disagrees with this rejection because, contrary to the Examiner’s assertion, the term “interrogation” is not a relative term. In other words, the term “interrogation” is not a term that readily connotes varying degrees. A person of ordinary skill in the art would understand that a medical device either is interrogated or is not interrogated. Such a person would not subsequently ask to what degree the medical device is interrogated.

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<sup>1</sup> Office Action dated July 25, 2008, paragraph 2.

Therefore, one of ordinary skill in the art would not view the term “interrogation” as being a relative term. Consequently, the term “interrogation” does not render claims 1-44 indefinite. Applicant notes that the interrogation of a medical device may refer to any method of obtaining event data including therapy events, diagnostic events, or both from an implantable medical device.<sup>2</sup> Accordingly, withdrawal of the rejection is respectfully requested.

In the Office Action, the Examiner also rejected claims 40-44 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention because of the word “system” recited in the preamble of these claims. In response to this rejection, Applicant has amended the preamble to these claims to recite the word “device” as is recited in the preamble of independent claim 39. Applicant submits that claims 40-44, as amended, particularly point out and distinctly claim the subject matter, as required by 35 U.S.C. 112, second paragraph. Withdrawal of the rejection is respectfully requested.

In the Office Action, the Examiner also rejected claims 10, 11, 35 and 36 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Examiner stated that claims 9-11 are the same, and that these claims would all be treated as identical to claim 9 for purposes of examination. Similarly, the Examiner also stated that claims 34-36 are the same, and that these claims would all be treated as identical to claim 34 for purposes of examination. Applicant respectfully disagrees with this analysis, and notes that claims 9-11 recite distinct limitations. For example, claim 9 recites “prioritizing events obtained from the interrogation based on the relative importance” and claim 10 recites “assigning the relative importance based on a set of rules.” These claims are clearly directed to different limitations. As one example, claim 10 requires that a relative importance be assigned to each of the events based on a set of rules while claim 9 does not have this requirement. As another example, claim 9 requires “prioritizing events” while claim 10 does not have this requirement. As such, these claims should be treated as distinct claims. Similarly, claims 34-36 should also be treated as distinct claims. All of these claims should be properly examined. Therefore, Applicant respectfully requests that the next Office Action properly examine claims 10, 11, 35 and 36, and that any

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<sup>2</sup> Specification, paragraph [0023].

rejection of these claims, if needed, should be made non-final. Withdrawal of the rejection under 35 U.S.C. 112, second paragraph is requested.

**Claim Rejection Under 35 U.S.C. § 103**

In the Office Action, the Examiner rejected claims 1, 3, 4, 8-11, 13, 17, 22, 25, 29, 31-36, 38, 39 and 43 under 35 U.S.C. 103(a) as being obvious over Rueter (U.S. Patent No. 5,944,745). The Examiner also rejected claims 2, 7, 12, 16, 18, 19, 23, 28, 30, 40, 41 and 44 under 35 U.S.C. 103(a) as being unpatentable over Rueter in view of Duffin et al. (U.S. Patent No. 6,292,698). In addition, the Examiner rejected claims 5, 6, 14, 15, 26 and 27 under 35 U.S.C. 103(a) as being unpatentable over Rueter in view of Hwang (U.S. Patent No. 5,920,271), and rejected claims 20, 21 and 42 under 35 U.S.C. 103(a) as being unpatentable over Rueter in view of Webb et al. (U.S. Patent No. 7,060,031).

Applicant respectfully traverses the rejections to the extent such rejections may be considered applicable to the amended claims. The applied references fail to disclose or suggest the inventions defined by Applicant's claims, and provide no teaching that would have suggested a rational reason to arrive at the claimed invention.

In support of the rejection, the Examiner pointed to an implantable medical device in Rueter, which can determine the relative importance of an event or indicator, as allegedly teaching the "prioritizing events" feature described in independent claim 1. The medical device in Rueter, which is implanted within a patient, may be configured to determine the relative importance of an event with respect to other events stored within the memory of the device.<sup>3</sup> However, the device in Rueter makes this determination in order to efficiently allocate a limited amount of memory storage space within the implanted device.<sup>4</sup> Thus, if there is no available memory for storage of a particular event in the device of Rueter, the device will determine if there are any events already stored in the memory that have less relative importance. If there are any such events, the device will overwrite or discard one of the events of lesser importance in order to store the more important event.<sup>5</sup> Accordingly, when the clinician next interfaces with the implanted device, the clinician will be able to obtain data pertaining to the clinically most

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<sup>3</sup> Rueter, abstract.

<sup>4</sup> Id. at col. 2, lines 1-9.

<sup>5</sup> Id.

significant events without worry that one or more of the discarded events may have been of higher significance.

In contrast to the determination of relative importance of events that occurs within the implanted device of Rueter, Applicant's claim 1 specifically requires that the events to be prioritized are "obtained from interrogation of a medical device implanted in a patient." In other words, the prioritization of events in Applicant's claim 1 happens outside of the medical device and external to the patient. Applicant has amended claim 1 to clarify this distinction. In particular, Applicant has amended claim 1 to specifically require that "the prioritization engine is external to the patient."

Applicant submits that Rueter fails to disclose or suggest such a feature. As already described above, the determination of relative importance of events that is described in Rueter occurs within a medical device, which is implanted within a patient. Rueter does not even contemplate that this determination would be made by a device other than the medical device implanted within the patient. This is because the determination made in the medical device of Rueter is made for the purpose of providing a memory allocation scheme that prevents clinically more important data from being overwritten by data that is clinically less important. Thus, the whole notion of determining the relative importance of events in Rueter is directed towards an efficient memory allocation scheme for use within an implanted device. The memory allocation scheme is needed in the implanted device because of the limited memory capacity available in such a device. Therefore, in order for the memory allocation scheme in Rueter to be effective, the determination of relative importance of events must take place within the implanted device. Consequently, one of ordinary skill would not have contemplated that the memory allocation scheme in Rueter could take place outside of the medical device implanted within the patient.

Moreover, if one were to modify Rueter such that the memory allocation scheme occurred outside of the implanted medical device, one would seriously impair, if not destroy, the functionality of the medical device. This is because the medical device would fail to store the most important data within its memory, and would instead overwrite the most important events with events of lesser importance. This would defeat the whole purpose of the memory allocation scheme disclosed in Rueter, which was specifically designed to prevent such a case. As such, one of ordinary skill in the art would have no rational reason to modify the device in Rueter such

that the memory allocation scheme in Rueter would take place outside of the implanted medical device and external to the patient. Accordingly, Rueter fails to disclose or suggest “prioritizing, with a prioritization engine, events obtained from interrogation of a medical device implanted in a patient, wherein the events include therapy events and diagnostic events, and wherein the prioritization engine is external to the patient” as required by amended claim 1.

Independent claims 8, 17, 29, 33 and 39 have been amended to include limitations similar to those recited in independent claim 1. Therefore, Rueter fails to disclose or suggest each and every requirement of independent claims 8, 17, 29, 33 and 39 for at least the reasons described above with respect to independent claim 1. Moreover, claims 2-7, 9-16, 18-28, 30-32, 34-38 and 40-44 depend, either directly or indirectly, from one of independent claims 1, 8, 17, 29, 33 and 39. Therefore, for at least the reasons outlined above regarding these independent claims, Rueter fails to disclose or suggest each and every requirement of dependent claims 2-7, 9-16, 18-28, 30-32, 34-38 and 40-44. In addition, the other applied references fail to overcome the deficiencies already discussed above with respect to Rueter et al. For example, Duffin et al. makes no mention of prioritization of events obtained from interrogation of a medical device implanted within a patient. Accordingly, Applicant submits that dependent claims 2-7, 9-16, 18-28, 30-32, 34-38 and 40-44 are allowable in view of the applied references. In light of the differences described with respect to the independent claims, Applicant reserves further comments concerning the rejection of the dependent claims, but neither admits nor acquiesces to the propriety of the Examiner’s interpretation of, or application of art to, such claims.

For at least these reasons, the Examiner has failed to establish a prima facie case for non-patentability of Applicant’s claims 1-44 under 35 U.S.C. 103(a). Withdrawal of this rejection is respectfully requested.

### CONCLUSION

All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

Date: October 27, 2008

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